Since IP's petition for review *in toto* raises issues other than the question of the Commission's basic jurisdiction, we respectfully suggest that the Court need not and should not grant certiorari with respect to the IP proceeding, but should rather permit IP's petition for review to remain pending before the Fifth Circuit for whatever proceedings that court believes appropriate in light of the action of this Court. The Solicitor General's petitions are filed under 28 U.S.C. § 1254(1), which provides for review by this Court of "cases in the courts of appeals" and specifically for review by certiorari "upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree." The "cases" in the court of appeals are the several petitions for review. There is no point bringing here IP's "case," which does not even pose the issue the Solicitor General wants this Court to decide.

Yet another reason for denial of certiorari before judgment with respect to IP's petition for review is that, while the threshold question of the Commission's jurisdiction has been determined adversely to the Commission by the Fifth Circuit in the collateral proceeding, this is not the case with respect to the issues raised by IP. Those issues were not before the Fifth Circuit in the collateral proceeding. They were raised only in the context of the curtailment proceeding. Consequently, the current decisional status of these issues cannot give rise to any claim of uncertainty as to the Commission's basic authority to administer curtailments of natural gas, the claim associated with the Fifth Circuit's decision in the collateral proceeding. Thus no pressing need exists, in terms of the orderly administration of the Natural Gas Act or the utilization of natural gas resources, for this Court now to face the issues raised by IP in the Fifth Circuit.

## CONCLUSION

For the foregoing reasons, the Solicitor General's petition for certiorari before judgment should be denied with respect to IP's petition for review now pending before the Fifth Circuit in Docket No. 71-3531.

Respectfully submitted,

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SUPREME COURT, U. S.

IN THE

# Supreme Court of the United States

OCTOBER TERM, 1971

No. 71-1016

FEDERAL POWER COMMISSION, *Petitioner,*

v.

LOUISIANA POWER & LIGHT COMPANY, ET AL.,
*Respondents*

(The Curtailment Proceeding)

No. 71-1040

UNITED GAS PIPE LINE CO., *Petitioner,*

v.

LOUISIANA POWER & LIGHT COMPANY, ET AL.,
*Respondents*

(FPC Opinion 606)

## BRIEF FOR MISSISSIPPI POWER & LIGHT COMPANY IN OPPOSITION TO PETITIONS FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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### OPINIONS BELOW

The Petitions make adequate reference to the fact that the case is now pending in the court below. That court has neither heard the case on its merits nor issued an opinion. The Petitions make adequate reference to the Commission's opinion in the case and the opinion denying rehearing. Because the Commission's opin-

ions as well as the court opinions in the so called collateral case have not been reported but are contained as appendices in the Petition, this Brief shall make references to the appendices where appropriate.*

## JURISDICTION

Because this curtailment proceeding arises from Opinion No. 606 of the Federal Power Commission, which is the determination of an administrative agency and not a court, and which Opinion is pending review before the Court of Appeals, the jurisdiction attempted to be invoked would be original rather than appellate in nature, and hence should be denied.

## QUESTIONS PRESENTED

1. Whether this Court should assume jurisdiction to review an order of an administrative agency when such order is before a Court of Appeals for review.

2. If such administrative order were properly before the Court for review, whether the Federal Power Commission has jurisdiction under the Natural Gas Act, 15 U.S.C. 717 *et seq.*, to order curtailments of natural gas by an interstate pipeline company to a direct purchaser of such gas in a manner contrary to the terms of the contract between the interstate pipeline company and the direct purchaser.

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* The Petitions of both the Federal Power Commission and United Gas Pipe Line Company, which are opposed by this Brief, relate to the same issue of Commission jurisdiction, arise from the same Commission Opinion No. 606 and seek a writ of certiorari to the same Court of Appeals. Although this Brief will answer specifically only the issues raised by the Commission's Petition, it will be equally applicable to those raised in United's Petition. The references made in this Brief will be to the Commission's Petition and Appendices.

## STATUTES INVOLVED

The statutory provisions involved are set forth in the Petitions.

## STATEMENT OF THE CASE

This case involves questions arising from a proceeding before the Federal Power Commission which was initiated by United Gas Pipe Line Company (United), a natural gas pipeline company subject to the Commission's jurisdiction. Alleging that its gas supply was insufficient to meet its total contractual obligations, United filed a curtailment plan with the Commission and requested an order approving it. This plan not only contemplated curtailment of deliveries of gas to United's resale customers, which sales are jurisdictional, but also sought Commission approval of curtailments of deliveries to direct sales customers in violation of their contracts with United, despite the fact that such direct sales are not subject to the Commission's jurisdiction.

A number of parties intervened and participated in the proceeding, including Mississippi Power & Light Company (MP&L). MP&L is an electric utility operating entirely within the State of Mississippi. It is a direct customer of United purchasing gas for consumption in its electric generating plants, but purchases no gas for resale.

MP&L and others took the position that since the Commission has no jurisdiction over direct sales, such as those made to MP&L by United, it has no power to authorize United to curtail deliveries of natural gas to direct sales customers in violation of their contracts with United. MP&L takes no position on the Com-